

BEFORE THE DEPARTMENT OF REVENUE
OF THE STATE OF MONTANA

In the matter of the adoption of New)	NOTICE OF PUBLIC HEARING ON
Rules I through III, the amendment of)	PROPOSED ADOPTION,
ARM 42.15.108 through 42.15.110,)	AMENDMENT, AMENDMENT AND
42.15.119, 42.15.120, 42.15.204,)	TRANSFER, AND REPEAL
42.15.216, 42.15.220, 42.15.301,)	
42.15.303, 42.15.315 through)	
42.15.317, 42.15.319, 42.15.327,)	
42.15.328, 42.15.602, 42.15.603,)	
42.15.802 through 42.15.807,)	
42.15.906, 42.15.1002 through)	
42.15.1004, the amendment and)	
transfer of ARM 42.15.112, 42.15.214)	
and 42.15.415, and the repeal of)	
ARM 42.15.205, 42.15.206,)	
42.15.213, 42.15.215, 42.15.217)	
through 42.15.219, 42.15.221,)	
42.15.222, 42.15.312, 42.15.318,)	
42.15.321, 42.15.322, 42.15.401)	
through 42.15.403, 42.15.427,)	
42.15.510, 42.15.523 through)	
42.15.527, and 42.15.902 pertaining)	
to the implementation of Senate Bill)	
399 (2021) (SB 399), Senate Bill 104)	
(2023) (SB 104), House Bill 221)	
(2023) (HB 221), and House Bill 447)	
(2023) (HB 447) regarding Montana)	
individual income taxes)	

TO: All Concerned Persons

1. On December 16, 2024, at 11:00 a.m., the Department of Revenue will hold a public hearing in the Third Floor Reception Area Conference Room of the Sam W. Mitchell Building, located at 125 North Roberts, Helena, Montana, to consider the proposed rulemaking for the above-stated rules. The conference room is most readily accessed by entering through the east doors of the building.

2. The Department of Revenue will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, please advise the department of the nature of the accommodation needed, no later than 5 p.m. on November 29, 2024. Please contact Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or todd.olson@mt.gov.

3. GENERAL STATEMENT OF REASONABLE NECESSITY The department proposes to adopt, amend, repeal, and transfer the above-described rules for the primary purpose of implementing Senate Bill 399 (2021) (SB 399), Senate Bill 104 (2023) (SB 104), House Bill 221 (2023) (HB 221), and House Bill 447 (2023) (HB 447). Changes across ARM Title 42, chapter 15, are necessary to align the administrative rules with these legislative changes and to improve the clarity and organization of content.

Notably, SB 399 simplified Montana's statutory individual income tax filing requirements by revising filing status elections, repealing Montana-specific standard and itemized deductions, and eliminating many Montana adjustments to income.

SB 399 amended 15-30-2113, MCA, which requires individuals to use the same income tax filing status for their Montana return as they use for their federal return. The significance of this change is that married couples may only file separate income tax returns for Montana if they have also filed separate federal income tax returns. So rule references related to a couple filing separate Montana returns are now obsolete and require repeal.

SB 399 also amended filing requirements under 15-30-2602, MCA, for married couples who either (1) do not have the same residency status (e.g., one is a resident, the other is a nonresident); or (2) both are nonresidents, but one spouse has Montana source income. The department proposes rule amendments, where necessary, to clarify that nonresident couples' Montana filing status is the same as their federal filing status (i.e., a joint return), and provide instruction on how taxpayers complete a Nonresident/Part-Year Resident Ratio Schedule to determine their Montana tax liability.

With SB 399's enactment of 15-30-2120, MCA, computation of Montana taxable income now starts with federal taxable income and has fewer adjustments as compared to previous iterations of Montana's tax laws. So the department proposes several rule amendments or repeals to reflect that Montana follows a taxpayer's federal elections about standard and itemized deductions, and that certain subtractions and other adjustments (such as unemployment compensation and some interest income exceptions) are no longer applicable.

SB 104's amendments to 15-30-2120, MCA, also provide an exclusion for certain military retirees working in Montana and adjustments to federal taxable income to determine Montana taxable income. Accordingly, the department proposes the adoption of NEW RULE I and NEW RULE II to implement the exclusion, define necessary terms, and provide examples of common scenarios involving the income exclusion. The department also proposes the creation of a new subchapter 15 within ARM Title 42, chapter 15, to contain all rules related to military servicemembers and their spouses; therefore, ARM 42.15.112, 42.15.214, and 42.15.415 are proposed for amendment and transfer to subchapter 15.

Following SB 399's repeal of the two percent capital gains credit provided in 15-30-2301, MCA, HB 221 amended 15-30-2103, MCA, to include a net capital gains credit based on tax brackets, filing status, and income levels. Based on these changes, the department finds it necessary to propose to adopt NEW RULE III to explain the treatment of these gains, generally, and provide a computation methodology for nonresidents with Montana capital gains so that nonresidents are not subject to a higher effective rate than a resident would pay on the same gains.

HB 447, enacted as 15-30-2106, MCA, provides an exemption from Montana income tax for workers employed in the state for 30 days or less. The department proposes to amend ARM 42.15.301 to address filing requirements for nonresident workers.

The department notes there are references throughout ARM Title 42, chapter 15 that list the department's physical address and website as a means for taxpayers to file individual income tax returns with the department. Because these are both subject to change and the department's organizational rule (ARM 42.1.101) includes all department addresses, the department proposes to remove the unnecessary redundancies and rely on the organizational rule, our website, and tax return instructions for the department's most up-to-date contact and filing information.

The department also proposes several global amendments within the rules which seek to improve sentence grammar, structure, verb tense, and verbiage with the goal of improving overall readability. These types of amendments are also necessary to improve consistency of content for the rules, especially where rules have not substantively changed over a prolonged period or because the rules were not amended in a comprehensive (i.e., chapter-wide) fashion and had numerous contributing content editors.

Finally, the department proposes necessary amendments to several rules' implementing statutes because SB 399 repealed numerous statutes and 2-4-305(3), MCA, requires each rule specify the statute(s) that authorize the agency to adopt rules and those statute(s) which the rules purport to implement.

While this general statement of reasonable necessity covers the basis for the proposed rule adoptions, amendments, repeals, and transfers, it is supplemented below to explain rule-specific proposals.

4. The rules proposed to be adopted are as follows:

NEW RULE I DEFINITIONS The following definitions apply to this subchapter:

(1) "Armed forces" means the same as the term provided in 10 USC § 101 and includes the Army, Navy, Marine Corps, Air Force, Space Force, or Coast Guard. For the purposes of administering these rules, the term also includes the Montana Army National Guard or the Army National Guard of other states; the Montana Air National Guard or the Air National Guard of other states; or a reserve component, as defined in 38 U.S.C. 101, of the United States armed forces.

(2) "Montana source wage income" means the same as the term defined in 15-30-2120, MCA, and does not include income from any passive activity as that term is defined in 26 USC 469(c). This definition is not the same as the definition of Montana source income in 15-30-2101, MCA, and is used in the calculation of the working military retiree income exclusion.

AUTH: 15-1-201, MCA
IMP: 15-30-2120, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt NEW RULE I

which is necessary to include definitions of commonly used terms that will be used in the proposed subchapter 15.

NEW RULE II WORKING ARMED FORCES/MILITARY RESIDENT RETIREE TAXABLE INCOME EXCLUSION

(1) A Montana resident who retired from the armed forces is entitled to an exclusion from taxable income received after December 31, 2023, as provided in 15-30-2120, MCA, in an amount equal to the lesser of their Montana source wage income or fifty percent of their military retirement income. The exclusion is available to an individual who began to receive military retirement income while a resident and an individual receiving military retirement income who became a resident after June 30, 2023.

(2) An individual who received military survivor benefits while a resident or an individual who received military survivor benefits who became a resident after June 30, 2023, may exclude fifty percent of the benefits received after December 31, 2023, which are included in their federal taxable income.

(3) Informational examples regarding the exclusion administered under this rule are as follows:

(a) Wes entered service into the Air Force while a Montana resident and maintained his residency. He retired September 30, 2023, and returned to Montana to work a full-time job. If his wages are \$50,000 and his military retirement income is \$40,000, he can exclude \$20,000 from his federal taxable income which is the lesser of his Montana source wage income or fifty percent of his military retirement income.

(b) Assuming the same military service and residency for Wes as in (a), but Wes works seasonally earning \$18,000, which is reported on his Schedule C as self-employment income. Wes' exclusion amount is limited to his self-employment income of \$18,000.

(c) Megan was a Florida resident serving in the Navy outside of Montana. Megan retired, started receiving her military retirement on August 30, 2023, and permanently moved to Montana soon after. Megan is eligible for the exclusion because she became a resident after June 30, 2023.

(d) Jake was a Texas resident serving in the Army outside of Montana. Jake retired, started receiving his military retirement on April 30, 2023, and permanently moved to Montana on May 17, 2023. Jake is not eligible for the exclusion because he began receiving his military retirement while a nonresident and became a resident prior to June 30, 2023.

AUTH: 15-1-201, MCA
IMP: 15-30-2120, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt NEW RULE II which is necessary to implement SB 104, outline the criteria for the exclusion, and provide examples for taxpayer guidance.

NEW RULE III NET LONG-TERM CAPITAL GAINS-CALCULATION OF TAX FOR PART-YEAR RESIDENTS AND NONRESIDENTS (1) The tax on net long-term capital gains recognized by nonresidents equals the tax on them, calculated

under 15-30-2103(2), MCA, multiplied by the ratio of net long-term capital gains sourced to Montana under 15-30-2104, MCA, to the total net long-term capital gains from all sources.

(2) When net long-term capital gains are recognized by a nonresident taxpayer, the amounts of net long-term capital gains must be excluded from the numerator and the denominator of the ratio provided under 15-30-2104, MCA, to calculate the tax under 15-30-2103(2), MCA.

(3) Informational examples regarding net long-term capital gains administered under this rule are as follows:

(a) Married nonresident taxpayers filing jointly in 2024 recognize a net taxable loss of (\$100,000) and a net long-term capital gain of \$50,000 which is sourced to Montana. Even though the Montana source income is positive, their tax liability is zero because the total taxable income is zero and 15-30-2103(1), MCA, does not create a separate tax on net long-term capital gains.

(b) Assuming the same taxpayers as in (a), except that they recognize a net taxable income of \$71,000, comprised of \$21,000 in ordinary income and \$50,000 in net long-term capital gains. The first tax rate applied is the tax on ordinary income which is 4.7 percent. The lower capital gains rate under 15-30-2103(2), MCA, is applied to the first \$20,000 of capital gains with the remaining \$30,000 subject to the upper rate.

(c) Assuming the same taxpayers as in (a) and (b) except income is \$40,000 of the net long-term capital gains sourced to Montana, \$7,000 of the nonqualified taxable income sourced to Montana and the ratio of Montana net long-term capital gains to capital gains from all sources is 0.80. The nonresident tax under 15-30-2103(2), MCA, equals \$1,464 [$\$1,830 \times 0.8$]. The nonresident ratio applied against the tax on the remaining nonqualified income is one-third. The nonresident tax on nonqualified taxable income is \$329 [$(\$21k \times 0.047) \times 0.333$]. The total tax for the nonresident is \$1,793.

AUTH: 15-1-201, MCA

IMP: 15-30-2103, 15-30-2104, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to adopt NEW RULE III which is necessary to implement HB 221 and provide taxpayer guidance and a computation methodology for nonresidents to determine their tax on net long-term capital gains. The rule addresses a scenario where a nonresident may have positive Montana source net long-term capital gains but lower, or zero, taxable income. Strict application of 15-30-2103, MCA, may lead to the nonresident paying more tax than a similar scenario that did not include capital gains. The rule outlines a computation that accounts for this situation and the examples in (3) offer hypothetical situations for application of the requirements.

5. The rules proposed to be amended are as follows, new matter underlined, deleted matter interlined:

42.15.108 DETERMINING TAX LIABILITY (1) A person required to file a Montana Individual Income Tax Return must determine their Montana income tax liability as provided by in accordance with the applicable Montana statutes and administrative rules. All income, except income specifically exempted in Title 15, chapter 30, MCA, or these rules, is included in determining income subject to Montana income tax.

(2) ~~The administrative rules for applicable to determining if an individual, whether resident for a full or part tax year, or a nonresident, who must file a Montana Individual Income Tax Return, are located in ARM Title 42, chapter 15, subchapter 3.~~

~~(a) Special rules, located in ARM Title 42, chapter 15, subchapter 1, Rules that apply to certain wages of nonresident military servicepersons and enrolled tribal members are located in ARM Title 42, chapter 15, subchapter 1.~~

~~(b) Rules that apply to certain wages and other income of resident and nonresident military servicemembers and the spouses of nonresident military servicemembers are located in ARM Title 42, chapter 15, subchapter 15.~~

~~(2) All income except income specifically exempted in Title 15, chapter 30, MCA, or these rules is included in determining income subject to Montana income tax.~~

(3) ~~The starting point for computing Montana individual income tax liability is usually adjusted gross income as determined for federal income tax purposes a taxpayer's federal taxable income, excluding the qualified business income deduction under IRC section 199A. If a taxpayer is not required to, or does not, file a federal income tax return for a tax year for which the taxpayer is required to file a Montana individual income tax return, but is still required to file a Montana tax return as outlined in 15-30-2602(1)(b), MCA, and ARM 42.15.301, the taxpayer shall compute federal adjusted gross taxable income and complete the applicable federal schedules. The federal computations and tax schedules required by this rule are tax records that the taxpayer must retain and provide the department on request include with their Montana income tax return.~~

~~(4) Federal adjusted gross taxable income is adjusted for Montana additions and subtractions to arrive at Montana adjusted gross taxable income. The subtractions reduce the amount of income subject to tax for all taxpayers, whether they claim the Montana standard deduction or itemized deductions.~~

(5) ~~The additions adjustments to taxable income for which additional rules are provided include:~~

~~(a) an S corporation shareholder's share of federal income tax paid by the S corporation located in ARM Title 42, chapter 9, subchapter 4;~~

~~(b) (a) unqualified nonqualified withdrawals from medical savings accounts located in ARM Title 42, chapter 15, subchapter 6; and~~

~~(c) (b) unqualified nonqualified withdrawals from first-time home buyer accounts located in ARM Title 42, chapter 15, subchapter 9;~~

~~(6) Unless otherwise specified below, rules that address subtractions are found in ARM Title 42, chapter 15, subchapter 2. The subtractions for which additional rules are provided include:~~

~~(a) certain military salary of resident servicepersons;~~

~~(b) certain interest income of taxpayers 65 and older;~~

- ~~(c) interest on federal obligations, and mutual fund dividends attributable to interest on federal obligations;~~
- ~~(d) certain disability income;~~
- ~~(e) certain capital gain income realized on or before December 31, 1986, that is being recognized on the installment reporting method;~~
- ~~(f) certain pension and annuity income;~~
- ~~(g) certain income of enrolled tribal members;~~
- ~~(h) certain income of a dependent child included in a parent's federal adjusted gross income;~~
- ~~(i) certain taxed social security benefits;~~
- ~~(j) (c) certain contributions to, and earnings on, medical savings accounts, located in ARM Title 42, chapter 15, subchapter 6;~~
- ~~(k) (d) certain contributions to, and earnings on, family education savings accounts, located in ARM Title 42, chapter 15, subchapter 8;~~
- ~~(l) (e) certain contributions to and earnings on first-time home buyer savings accounts, located in ARM Title 42, chapter 15, subchapter 9; and~~
- ~~(f) military retirement income located in ARM Title 42, chapter 15, subchapter 15.~~
- ~~(m) dividends and capital gains realized from investment in certain small business investment companies, ARM Title 42, chapter 15, subchapter 2 and chapter 23, subchapter 1.~~
- ~~(7) After Montana adjusted gross income is determined, a taxpayer is allowed the standard deduction unless the taxpayer claims itemized deductions. The standard deduction is addressed in ARM Title 42, chapter 15, subchapter 5.~~
- ~~(8) Unless otherwise specified below, rules that address itemized deductions are found in ARM Title 42, chapter 15, subchapter 5. As provided in 15-30-2133, MCA, deductions for expenses associated with the excluded income described in (6) are not allowed. Additional rules related to itemized deductions include:
 - ~~(a) a rule describing the calculation of itemized deductions that are limited to a percent of Montana adjusted gross income;~~
 - ~~(b) a rule describing how certain itemized deductions must be computed when a married taxpayer filing a joint federal income tax return files a separate Montana return; and~~
 - ~~(c) a rule describing calculation of the Montana net operating loss.~~~~
- ~~(9) After income is reduced by the standard deduction or itemized deductions, it is further reduced by personal and dependent exemptions to determine Montana taxable income. The rules relating to personal and dependent exemptions are found in ARM Title 42, chapter 15, subchapter 4.~~
- ~~(10) (6) The tax rates set forth provided in 15-30-2103, MCA, are applied to Montana taxable income. Tax brackets are adjusted annually for inflation. The Montana tax liability of a nonresident or part-year resident is determined by multiplying the calculated tax by the ratio of Montana source income to total income the process and requirements outlined in ARM 42.15.110 and [NEW RULE III].~~
- ~~(11) (7) Rules describing credits that may be taken against income tax liability are located in ARM Title 42, chapter 4.~~

AUTH: 15-30-2620, MCA

IMP: 15-30-2101, 15-30-2102, 15-30-2103, 15-30-2104, ~~15-30-2110~~, 15-30-2114, 15-30-2131, 15-30-2153, 15-30-2602, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.108 to implement SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA, as outlined in the department's general statement of reasonable necessity.

Amendments are also proposed for the rule to reflect a statutory change in when filing a Montana return is required. Under 15-30-2602, MCA, any individual required to file a federal return who is either a Montana resident or is a nonresident with Montana source income is required to file a Montana return. A Montana return is also required if an individual has positive Montana taxable income in any amount after applying Montana adjustments to income.

42.15.109 RESIDENCY (1) As provided in 15-30-2101, MCA, an individual may be a resident for Montana individual income tax purposes if the individual is domiciled in the state or maintains a permanent place of abode in the state. Section 1-1-215, MCA, sets forth rules for determining residency, and "domiciled" is defined in ARM 42.2.304. Whether an individual is a Montana resident for Montana income tax purposes is determined in light of all facts and circumstances.

~~(2) A Montana resident who enters the United States armed forces does not lose that status as a Montana resident solely by reason of being absent from this state in compliance with military orders.~~

~~(3) Special rules regarding nonresident military personnel and their dependents are located at ARM 42.15.112.~~

AUTH: 15-30-2620, MCA

IMP: 15-30-2101, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.109 to remove rule text which pertains to the taxation of military servicemembers and their spouses and transfer it to ARM 42.15.112, which is proposed to be transferred to ARM 42.15.1510, as outlined in the department's general statement of reasonable necessity.

42.15.110 TAXATION OF PART-YEAR RESIDENTS AND NONRESIDENTS

(1) Part-year residents and nonresidents are subject to the same filing requirements as residents unless otherwise expressly exempted in statute.

(2) Part-year residents and nonresidents must include all Montana source income on ~~Schedule IV of Form 2, Schedule II - Tax on Montana Source Income.~~ Montana source income is defined in 15-30-2101, MCA.

(3) Part-year residents and nonresidents compute their tax liability by multiplying the ratio of their Montana source income to everywhere income from all sources by the tax determined as if they were a resident for the entire tax year. ~~They must complete Schedule IV, Nonresident/Part-Year Resident Tax, to~~ Completing Schedule II - Tax on Montana Source Income determines this ratio.

(4) ~~Part-year resident and nonresident estates and trusts are subject to the same filing requirements set forth in (1) through (3) unless otherwise expressly exempted in statute. A married couple comprised of one resident and one nonresident or part-year resident, filing jointly, must complete the Schedule II - Tax on Montana Source Income to compute the ratio of Montana income to everywhere income.~~

(a) The ratio's numerator is everywhere income for the resident spouse and Montana source income for the nonresident or part-year resident spouse.

(b) The ratio's denominator is everywhere income for both spouses.

(c) If the income for either spouse includes capital gains that are subject to tax under 15-30-2103(2), MCA, the couple must complete the net long-term gains portion of the schedule to determine the ratio in (4). The numerator is then all net long-term capital gains for the resident spouse and Montana source net long-term capital gains for the nonresident or part-year resident spouse. The ratio's denominator is all net long-term capital gains for the married couple.

(5) A married couple filing under the terms of (4) is entitled to the credit for taxes paid to another state or country under 15-30-2302, MCA, only on income sourced to Montana based on residency which is subject to income tax in another state or country.

AUTH: 15-30-2104, MCA

IMP: 15-30-2101, 15-30-2103, 15-30-2104, ~~15-30-2110, 15-30-2111, 15-30-2114, 15-30-2120, 15-30-2131, 15-30-2132, 15-30-2151, 15-30-2152, 15-30-2153, 15-30-2154, MCA~~

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.110 to implement SB 399 as outlined in the department's general statement of reasonable necessity and update the implementing statutes for the rule under 2-4-305, MCA.

In addition, the department proposes to amend the rule to improve guidance for married couples completing the Montana return when a joint federal return is filed, and where one spouse is a resident and the other is a nonresident (or part-year resident), or where only one nonresident spouse reports Montana source income.

42.15.112 (42.15.1510) NONRESIDENT MILITARY PERSONNEL SERVICEMEMBERS (1) ~~A nonresident member of the United States armed forces who is living in this the state solely by reason of for compliance with military orders does not become a Montana residents solely by reason of being present in this state in compliance with military orders and their military compensation for military service is not Montana source income. Starting in 2009, some nonresident Nonresident spouses who move to Montana solely to be with that nonresident serviceperson are also allowed to military servicemembers may retain their home residence or "domicile" and, subject to certain rules and limitations described in (6), their wage and other personal services income is not Montana source income.~~

(2) Nonresident military ~~servicepersons~~ servicemembers and their spouses are, except as provided in (4), subject to Montana individual income tax in the same manner and to the same extent as any other nonresident with Montana source income.

(3) As provided in 1-1-215, MCA, if a person claims a residence within Montana for any purpose, such as obtaining a resident hunting or fishing license, ~~that location Montana~~ is their residence for all purposes, including Montana individual income tax, unless there is a specific statutory exception. ~~The definition of "resident" in Provided, however, 87-2-102, MCA, permits~~ allows exceptions for certain nonresident military ~~personnel~~ servicemembers and their dependents to obtain resident hunting, fishing, and trapping licenses without subjecting them to individual income tax liability as residents.

(4) While the Montana income tax liability of nonresidents is usually determined by calculating the tax as if they were residents, then multiplying that calculation by their ratio of Montana source income to total income, the Military Family Tax Relief Act of 2003 requires states to implement special rules ~~when the nonresident is a~~ for military ~~serviceperson~~ servicemembers. If a nonresident ~~serviceperson~~ military servicemember with Montana source income or their spouse is required to file a Montana individual income tax return, the exempt military income must be excluded from both the numerator and the denominator in determining the ratio of Montana source income to total income as provided in ARM 42.15.110.

(5) An example of how the tax liability would be calculated is:

(a) A nonresident ~~serviceperson~~ military servicemember and their nonresident spouse who do not claim an exemption as described in (6)(b) are filing a joint return have the following income:

Military compensation	\$40,000
Spouse's - Montana source income	\$30,000
Interest income - Joint	\$500
Dividend income - Joint	\$1,000
Total Income	\$71,500

(b) The exempt military compensation is a subtraction that reduces Montana ~~adjusted gross~~ taxable income:

Gross income:	\$71,500
Less: E <u>exempt</u> military compensation	(\$40,000)
Montana adjusted gross <u>taxable</u> income	\$31,500

~~(c) The Montana personal and dependent exemptions and either the standard deduction or itemized deductions are subtracted from Montana adjusted gross income to determine Montana taxable income:~~

Montana adjusted gross income	\$31,500
Less: Deduction and exemptions	(\$17,340)
Taxable income	\$14,160

~~(d) (c)~~ The tax, determined on the taxable income, is multiplied by the ratio of Montana source income to total income from all sources except the exempt military compensation:

Montana source income	\$30,000
Total income from all sources except military compensation (\$30,000 + 500 + 1,000) =	\$31,500
Ratio \$30,000/\$31,500 =	.9523

~~(e)~~ (d) If the tax determined on the taxable income were \$1,000, the taxpayers' Montana tax liability would be \$952, the Montana tax liability of \$1,000 multiplied by .9523, the ratio of \$30,000 to \$31,500.

(6) ~~Retroactive to the beginning of calendar year 2009, the~~ The Military Spouses Residency Relief Act, Public Law No. 11197 (MSRRA), enacted special rules that affect how Montana and other states tax the wage and other personal service income earned by nonmilitary spouses (for simplicity, the term "wages" will be used to describe all personal services income).

(a) If a military ~~serviceperson~~ servicemember and nonmilitary spouse are residents of the same state (the "home state"); when the nonmilitary spouse moves to Montana ~~solely to be with the military spouse who is serving in Montana in compliance with military orders~~ servicemember as described in (1), the MSRRA allows the nonmilitary spouse to remain a resident of the home state. If that nonmilitary spouse does remain a resident of the home state, and only the home state may tax the nonmilitary spouse's wages. Wages earned in Montana that are sourced to the home state are not Montana source income.

(b) Qualified nonmilitary spouses must claim ~~an annual exemption from wage withholding annually by completing Form MSR—Employee Certificate of Status under the Military Spouses Residency Relief Act. MW-4 – Employee's Withholding and Exemption Certificate which they submit each year to their employer by end of the first payroll period in January.~~

(c) If ~~and when~~ a nonmilitary spouse no longer meets the requirements of the MSRRA, their wages are will be sourced to Montana, as provided in 15-30-2101, MCA. The following events disqualify the nonmilitary spouse's wages for special treatment under the MSRRA:

- (i) the military ~~spouse~~ servicemember leaves the military;
- (ii) the nonmilitary spouse becomes a resident of Montana;
- (iii) the marriage to the military ~~spouse~~ servicemember terminates; ~~and or~~
- (iv) ~~physical separation due to a duty change when the military spouse's orders move them outside Montana and their spouse is allowed to join them but chooses not to. the military servicemember is reassigned out of Montana but the nonmilitary spouse remains in Montana.~~

AUTH: 15-30-2620, MCA
IMP: 15-30-2101, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.112 and transfer it to ARM 42.15.1510 primarily to implement SB 399 and SB 104 as outlined in the department's general statement of reasonable necessity.

Further, the current version of the rule contains inconsistent references to military personnel (e.g., serviceperson, servicemember) and contains verbiage that can be stated more clearly and concisely, so the department proposes several

nonsubstantive edits for brevity and to improve clarity of the rule's content. Lastly, outdated references are proposed for removal and the process for a military servicemember's spouse to claim an exemption from wage withholding has been updated to more accurately reflect updated department practice which was modified for efficiency.

42.15.119 ALTERNATIVE TAX (1) A nonresident taxpayer whose only activities in Montana consist of making sales and do not include owning or renting real or tangible personal property and whose dollar volume of gross sales made in Montana during the taxable year does not exceed \$100,000, may elect to pay a tax of ~~1/2%~~ one-half percent on the gross volume of sales made in Montana during the taxable year. Such tax is in lieu of the tax based upon net income as described in ~~15-30-2101(1)~~ 15-30-2103 and 15-30-2104(1)(a), MCA.

(2) The election to pay the alternative tax is made by filing ~~a return on~~ Form 2 and including Form DE, reporting the dollar amount of Montana gross sales, and paying a tax determined on the basis of ~~1/2%~~ one-half percent of the amount of such sales. The gross volume of sales made in Montana must be determined according to the provisions of paragraphs 16 and 17 of Article IV of the Multistate Tax Compact. A statement must be attached to the return to the effect that the taxpayer's only activities in Montana consist of making sales and do not include owning or renting real property or tangible personal property.

AUTH: 15-30-2104, 15-30-2620, MCA
IMP: 15-30-2104, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.15.119 to reflect a department change in a filing method for individuals reporting income tax to Montana under the alternative tax provisions. These individuals must now complete (new) Form DE and include a copy with their filed Montana Individual Income Tax Return (Form 2).

The department also proposes to update the statutory cross references in (1) and amend the format of the percentages in the rule for internal consistency with other department rules and for conformity with the style guide adopted by the Secretary of State for administrative rules.

42.15.120 APPORTIONABLE AND NONAPPORTIONABLE INCOME - APPORTIONMENT OR ALLOCATION - INDIVIDUALS, ESTATES, AND TRUSTS

(1) For purposes of the reporting requirements for individuals, trusts, and estates that have Montana apportionable or nonapportionable income and determining their Montana tax liability, ~~the department adopts by reference the~~ following rules contained in ARM Title 42, chapter 26 - Corporate Multistate Activities subchapters are cross referenced for guidance and applicability:

- (a) 1 - General Provisions;
- (b) 2 - Income Allocation and Apportionment, except ARM 42.26.204, 42.26.228, 42.26.229, and 42.26.260;
- (c) 4 - Special Rules Related to Installment Sales;

- (d) 6 - Railroads;
- (e) 7 - Trucking;
- (f) 8 - Airlines;
- (g) 9 - Special Rules for Construction Contracts;
- (h) 10 - Publishing Companies - Apportionment;
- (i) 11 - Television and Radio Broadcasting;
- (j) 12 - Telecommunication Services for Corporate Income Taxes; and
- (k) 13 - Financial Institutions.

(2) The taxpayer may petition for, or the department may require, an alternative method of reporting activity in the state as provided in 15-1-601, MCA.

(3) When applying the rules referred to in (1), the terms "individual," "trust," or "estate" replace the term "corporation," and the provisions of Title 15, chapter 30, MCA, replace references to Title 15, chapter 31, MCA.

AUTH: 15-30-2620, MCA

IMP: 15-1-601, ~~15-30-2111~~ 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.120 as outlined in the department's general statement of reasonable necessity relative to updating the implementing statutes for the rule under 2-4-305, MCA, and to correct a minor, technical misstatement in (1) because the department does not adopt its own rules by reference but provides cross references to relevant rules for taxpayer and tax professional guidance.

42.15.204 DEFINITIONS The following definitions apply to ~~rules found in this~~ subchapter:

~~(1) "Armed forces" means the United States Army, Navy, Marine Corps, Air Force, or Coast Guard.~~

~~(2)~~ (1) "Obligation" means, for the purposes of determining the applicability of the exclusion of interest income, an interest-bearing financial instrument of the United States government, a state, or a political subdivision, in the form of a bond, other written certificate, or loan issued pursuant to the exercise of such governmental body's borrowing power for use in governmental operations.

AUTH: 15-30-2620, MCA

IMP: ~~15-30-2117~~ 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.204 as outlined in the department's general statement of reasonable necessity relative to SB 399, the transfer of military servicemember content to proposed ARM Title 42, chapter 15, subchapter 15, and updating the implementing statutes for the rule under 2-4-305, MCA.

42.15.214 (42.15.1510) RESIDENT MILITARY SALARY EXCLUSION (1) The following items of military compensation received by a resident ~~service member~~ military servicemember are exempt from Montana income tax:

- (a) basic, special, and incentive pay received for serving on active duty as a member of the ~~regular~~ armed forces;
 - (b) basic, special, and incentive pay received for serving on active duty as a member of the National Guard ~~under Title 10 USC orders~~;
 - (c) basic, special, and incentive pay received by a member of a reserve component of the armed forces or a member of the National Guard, for active duty in a "contingency operation" as defined in 10 USC 101; and
 - (d) basic, special, and incentive pay received by a member of the National Guard performing a "homeland defense activity" as defined in 32 USC 901.
- (2) Military compensation that is not exempt from Montana income tax includes:
- (a) salary received for annual training and inactive duty training for service not described in (1)(b) through (1)(d);
 - (b) salary received by a member of a reserve component of the armed forces for service not described in (1)(b) through (1)(d);
 - (c) salary received by a member of the National Guard engaged in "active Guard and Reserve duty" as defined in 10 USC 101, for service not described in (1)(b) through (1)(d); and
 - (d) retired, retainer, or equivalent pay, or allowances that do not fall under the subtraction for military retirement income found in 15-30-2120, MCA.
- ~~(3) As provided in the Military Family Tax Relief Act of 2003, for federal income tax purposes a member of a reserve component of the armed forces may deduct certain travel expenses incurred after December 31, 2002, in connection with serving more than 100 miles away from home. Because the deduction reduces federal adjusted gross income, the deduction also reduces the service member's income subject to Montana tax.~~

AUTH: 15-30-2620, MCA

IMP: 15-30-2101, ~~45-30-2117~~ 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.214 and transfer it to ARM 42.15.1510 as outlined in the department's general statement of reasonable necessity relative to SB 399, the transfer of military servicemember content to proposed ARM Title 42, chapter 15, subchapter 15, and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.216 EXCLUSION OF INTEREST ON OBLIGATIONS (1) Interest on United States government obligations, as defined in ARM 42.15.204, and mutual fund dividends attributable to that interest, to the extent included in federal ~~adjusted gross taxable~~ income, are exempt from Montana income tax. Interest on obligations of U.S. territories and government agency obligations specifically exempted by federal law, and mutual fund dividends attributable to that interest, are also exempt from Montana income tax.

- (2) United States obligations that are exempt include:
 - (a) series E, EE, F, G, H, and HH savings bonds;
 - (b) U.S. treasury bills;
 - (c) U.S. government notes; and
 - (d) U.S. government certificates.

(3) Interest received from guarantees that do not conform to the definition in ARM 42.15.204, or obligations guaranteed by the United States government including mutual fund dividends attributable to Government National Mortgage Association (Ginnie Mae) bonds, Federal National Mortgage Association (Fannie Mae) bonds, and Federal Home Loan Mortgage Corporation (FHLMC) securities, are not tax-exempt.

AUTH: 15-30-2620, MCA
IMP: ~~15-30-2110~~ 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.216 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.220 EXEMPTION OF CERTAIN INCOME OF ENROLLED TRIBAL MEMBERS (1) Wages are exempt from individual income tax when:

(a) the individual is an enrolled tribal member of the governing tribe of the reservation on which the enrolled tribal member works and resides; and

(b) the wages are derived from reservation sources.

(2) When wages are derived from both reservation sources and nonreservation sources, only wages derived from reservation sources are exempt from taxation, provided the individual meets all the criteria in (1).

(3) When a Native American does not reside on his or her reservation for an entire year, only wages earned while he or she was residing on the reservation are exempt from taxation, provided he or she meets all the criteria in (1).

(4) A Native American residing outside the boundaries of his or her reservation has no special exemption other than income derived directly from allotted or restricted lands, held in trust by the United States.

AUTH: 15-30-2620, MCA
IMP: 15-30-2101, 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.220 as outlined in the department's general statement of reasonable necessity to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.301 WHO MUST FILE RETURNS (1) The following persons must file an individual income tax return:

(a) ~~every resident who is a single person, and every resident who is a married person who does not elect or, as provided in ARM 42.15.321, is not allowed to elect, to file a joint return with a spouse, must file a return if the person's gross income from all sources for the taxable year is more than \$4,370, adjusted as provided in (2) required to file a federal income tax return;~~

(b) ~~married persons, both of whom are residents, not filing separate returns must file a joint return if their combined gross income for the taxable year from all sources exceeds \$8,740, adjusted as provided in (2) every nonresident with Montana source income, including net losses, who is:~~

(i) not eligible for the nonresident exclusion for temporary workers provided in 15-30-2106, MCA; or

(ii) from a pass-through entity and the nonresident's share of the income is not included in a return filed under either 15-30-3312 or 15-30-3326, MCA;

(c) every nonresident who is a single person, and every nonresident who is a married person who does not elect or, as provided in ARM 42.15.321, is not allowed to elect, to file a joint return with a spouse, must file a return if the person has any Montana source income or loss and their gross income from all sources is more than \$4,370, adjusted as provided in (2); and an individual claiming an adjustment to federal taxable income if it results in Montana taxable income, as provided in 15-30-2602(1)(b), MCA; or

(d) married persons, both of whom are full-year nonresidents, not filing separate returns, must file a joint return if either or both of them have any Montana source income or loss and their combined gross income for the taxable year from all sources exceeds \$8,740, adjusted as provided in (2) a Montana medical savings account holder who is a resident and required to report under ARM 42.15.602(3).

(2) The minimum gross income amounts requiring filing a return shown in (1) were calculated for tax year 2014. Minimum gross income amounts An individual not required to file a federal income tax return will still need to file a Montana individual income tax return in the following situations:

(a) are adjusted annually in accordance with 15-30-2602, MCA. By November 1 of each year, the department will multiply the minimum amount of gross income necessitating filing by the inflation figure for the current taxable year; they are claiming a refundable tax credit such as the Montana earned income tax credit or adoption credit; or

(b) are increased by the value of any exemptions the person is entitled to for age 65 or for blindness, but are not also increased by the exemption allowed for all taxpayers under 15-30-2114(2)(a), MCA; and they are requesting a withholding refund for overpaid withholding on Montana wages, withholding on wages earned by a nonresident military spouse, withholding on wages earned under the North Dakota reciprocity agreement, or mineral royalty withholding for an individual without a federal filing requirement.

(c) can be obtained for previous tax years by accessing the past year downloadable tax forms from the homepage of the department's web site at revenue.mt.gov.

(3) The following persons must file a fiduciary return:

(a) the estate of a decedent who was a resident must file a return if its gross income for the year from all sources exceeds its federal exemption allowance;

(b) the estate of a decedent who was a nonresident must file a return if its gross income from all sources exceeds its federal exemption allowance, and the estate has any Montana source income; and

(c) a nonbusiness trust which is not a grantor trust and is subject to the Montana Trust Code, Title 72, chapter 33, MCA, must file a return if its gross income for the year from all sources exceeds its exemption allowance.

(4) A nonresident's distributive share of a pass-through entity's Montana source income is included in determining a nonresident's obligation to file a Montana individual income tax return. A nonresident whose only Montana source income for

the tax year is from one or more partnerships or S corporations, each of which has elected to file a composite return and pay a composite tax on behalf of consenting participants, is not required to file an individual income tax return. A nonresident who has Montana source income from a partnership or S corporation who does not elect to file a composite return or who has any other Montana source income (for example, wages from employment in Montana or rental income from property located in Montana), is required to file a Montana individual income tax return if the gross income from all sources, adjusted as provided in this rule, exceeds the applicable limit.

AUTH: 15-1-201, 15-30-2620, 15-31-501, MCA

IMP: 15-30-2602, 15-30-2603, 15-30-3302, 15-30-3311, 15-30-3312, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.15.301 to provide more specific guidance regarding who is required to file a Montana individual income tax return based on the statutory changes made by SB 399 and HB 447. The proposed amendments to the rule are necessary to outline that:

- a Montana individual income tax return must be filed if the individual is claiming an adjustment to federal taxable income that results in Montana taxable income. This requirement applies even if the taxpayer did not file a federal individual income tax return;
- a Montana individual income tax return must be filed if the individual is claiming a refund (i.e., a Montana refundable tax credit or a refund from excess withholding);
- that nonresidents are not required to file a Montana tax return if they meet the conditions to be considered a temporary worker under HB 447;
- nonresidents are exempt from filing a Montana individual income tax return if all their Montana source income is from a pass-through entity and reported on a composite or pass-through entity tax return.

42.15.303 RETURNS FOR THOSE UNABLE TO MAKE OWN RETURN FILING INDIVIDUAL INCOME TAX RETURNS USING A DESIGNEE (1) ~~Any A~~ taxpayer who ~~for any reason~~ is unable to make a ~~to~~ file their individual income tax return may have the return made filed by a designated agent. For purposes of this rule, a designated agent is a person designated by the taxpayer under a power of attorney, or in the case of a minor, incapacitated person, or decedent, the return may be made by the minor or by a parent, guardian, or other court-designated person charged with the minor's care or property taxpayer's financial matters. ~~In the case of a taxpayer who is mentally or physically incapable of making a return, the return for such person shall be made by the guardian or other person charged with the care of the taxpayer's person or property.~~

(2) An individual income tax return must be filed for a decedent taxpayer covering the period from the beginning of the taxable year to the date of death. ~~If the deceased taxpayer was married, a joint return may be filed to include the income~~

~~of the decedent for the period the decedent was alive and the income of the surviving spouse for the entire taxable year. The executor or administrator of the decedent is responsible for making the decedent's return.~~

AUTH: 15-30-2620, MCA
IMP: 15-30-2602, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.303 as outlined in the department's general statement of reasonable necessity relative to SB 399, which requires individuals to use the same filing status as their federal return; therefore, the election provided in (2) is no longer an option. The department also proposes amendments as outlined in the department's general statement of reasonable necessity relative to grammar, sentence structure, and verbiage within the rules with the goal of improving the overall readability. And lastly, the department proposes amendments to acknowledge other valid legal and fiduciary-designated relationships which the current version of the rule does not include.

42.15.315 ORIGINAL AND AMENDED RETURNS (1) An original return is ~~considered to be the return that is due on the fifteenth day of the fourth month after the close of the taxpayer's tax year prescribed filing date, as described in 15-30-2604, MCA, and ARM 42.15.319. The date prescribed for filing is the original return's due date, excluding extensions.~~

~~(2) An Original returns are is the Montana Forms 2, 2EZ, and FID-3 only. Montana Form 2M applies only to tax year 2014 and prior years.~~

(3) An amended return is not an original return but only a correction to an original return.

~~(4) An amended return will not be accepted without an original return being on file with the department~~ The department will not accept an amended return if an original return has not been filed.

~~(5) Late file Interest, late filing, and late pay payment penalties are assessed as required under 15-1-216, MCA, on the correct amount due reported on the original return.~~

~~(6) The late file Interest, late filing, and late pay payment penalties will be are calculated from the due date in (1), and adjusted based on the corrected amount of tax due, which results from an amended return, adjustment from an audit, or correction to the original return.~~

~~(7) If required by 15-1-216, MCA, interest will be calculated on the original return. If an amendment is made to the original return, interest will be calculated as required under 15-30-2609 or 15-30-2602, MCA, as of the due date in (1).~~

~~(8) (7) An extension of time to file an original return does not extend the time to pay. Taxes are due on the prescribed filing date. When an original return is filed after the prescribed date, but before the extension extended due date and payment is not made, the tax due is subject to interest and the return is subject to late pay penalties late payment penalty.~~

(8) The department may not issue a credit or refund of an overpayment of taxes shown on a return if:

(a) the return is filed more than one year after the expiration of a suspension of the federal statute of limitations for the collection of federal income tax;

(b) the return is filed more than three years after the prescribed filing date;

(c) for tax years beginning after December 31, 2016, the original return is filed more than three years after the date prescribed for filing and one year after an overpayment is made; or

(d) the return is filed more than 40 months and 15 days after the last month of the tax year that a net operating loss occurred within the limitations provided in 15-30-2609(2)(b), MCA.

~~(9) If an extension of time to file has been made and the original return was not filed before the extension deadline, the original return is subject to late file and late pay penalties.~~

~~(10) (9) When an original return for tax years beginning on or after January 1, 2010, is filed after the extended due date, and the department does not issue the requested refund within 45 days of receiving the return, interest as allowed under 15-30-2609, MCA, is payable from the date the return was filed. For example, an original return for tax year 2016 20X1 requesting a refund is filed November 12, 2017 20X2, and the department does not issue the refund until January 30, 2018 20X3. Refund interest is payable from the date the return was filed (November 12, 2017 20X2) until the date the refund was issued (January 30, 2018 20X3).~~

(10) The department may not pay interest on a refund under 15-30-2609, MCA, if the refund is:

(a) issued 45 days before the latter of:

(i) the prescribed filing date in (1); or

(ii) when the return was filed;

(b) as a result of a federal net operating loss carryback;

(c) in an amount less than \$1;

(d) not the result of an actual tax liability; or

(e) from an amount by a taxpayer in which no items of Montana source income or loss were reported for the period.

(11) If the department sends a request for information to a taxpayer regarding a pending refund, the taxpayer must respond or request additional time within 30 days of the date of the request.

(a) If the taxpayer responds to the request from the department, interest will accrue from the date prescribed under 15-30-2609, MCA.

(b) If the taxpayer responds to the request after 30 days absent an agreement with the department for additional response time, interest will not accrue from the date of the request until the requested information is received by the department.

(c) If the taxpayer fails to respond to the request, the department may deny the refund request and issue an adjustment letter which explains the denial, as provided in ARM 42.2.510.

~~(11) The appeal process, provided in ARM 42.2.613 through 42.2.621, will apply to adjustments and corrections made by the department to a filed amended return.~~

AUTH: 15-30-2620, MCA

IMP: 15-1-216, 15-30-2512, 15-30-2602, 15-30-2609, MCA

REASONABLE NECESSITY: In addition to the department's general statement of reasonable necessity, the department proposes to amend ARM 42.15.315 to reflect statute of limitations revisions enacted under Senate Bill 65 (2023) (SB 65).

The department proposes to include the "date prescribed for filing" in (1) because the phrase is frequently referenced throughout Title 15, chapter 30, part 26, MCA, and clarity of its application is advisable. Further, and because there is automatic extension to file returns in 15-30-2604(3)(a), MCA, it is necessary to clarify that the date prescribed for filing is the original due date of the return.

The department proposes to remove "Forms 2EZ and 2M" in (2) because these forms were discontinued in 2018 and 2015, respectively.

The department proposes to amend (4) to improve sentence structure and readability of the rule section.

The department proposes to add "interest" to current (5), (6), and proposed (7), while striking current (7). These rule sections discuss situations where the department is required to assess late filing and late payment penalties. Because interest is always assessed when the late payment penalty is assessed, adding the interest component to the rule section is necessary. Removing current (7) is proposed because it is unnecessarily redundant based on the proposed amendments. The department also proposes to reword late filing and late payment penalties in the rule to align with 15-1-216, MCA.

The department proposes to remove the first sentence in proposed (7), as it is stated in 15-30-2604(5), MCA. The department proposes to add a new sentence to the section to clarify that taxes are due on the date prescribed for filing, as described in (1).

The department proposes to remove current (9) because it is no longer necessary. Section 15-30-2604(3)(a), MCA, provides an automatic extension of six months for a taxpayer to file their return. As a result, the taxpayer is not required to file for an extension of time to file the return and a late filing penalty will not be assessed if an extension is not made. Further, a tax return is not subject to late payment penalties. The tax is subject to the late payment penalty and is addressed in proposed (7).

The department intends to add proposed (8) to clarify an often-confusing statutory provision in 15-30-2609(2), MCA, to which the department frequently receives appeals and questions. First, the amendment explains 15-30-2609(2), MCA, in simpler terms and provides examples of four scenarios where the department cannot issue a refund. Second, the department proposes new (8)(c) to clarify "one year from the date of the overpayment is made." This clause could be misconstrued that a taxpayer could make an overpayment at any time just to extend the revision period, but the intent of the law is to allow the department to issue a refund when a taxpayer has made a payment for an estimated liability while they are working to file their return. The phrase "or filing" is meant to reference the original filing of the return when an overpayment is made.

The department proposes to amend proposed (9) to strike the phrase "for tax years beginning on or after January 1, 2010." This clause is no longer necessary in

the determination of refund interest as tax year 2011 is outside of the statute of limitations for a refund. The department also proposes a year example format that uses the sequence of years through the use of the last number in the year. The new format will be 20X1, 20X2, 20X3, etc. This method should be familiar to tax professionals and filers as the IRS uses this format in its regulations and is a continuation of similar rule changes adopted under MAR Notice Nos. 42-1079 and 42-1081.

Proposed (10) clarifies the application of the statute of limitations for refund claims in several scenarios and proposed (10)(c) is consistent with the changes to 15-30-2609, MCA, made by SB 65.

The department relies on 15-30-2609(4)(a), MCA, for guidance during the audit of a refund and proposes to add proposed (11) to clarify procedures. While the statute implies the procedure for the delay of the accrual of interest, proposed (11) explains the department's procedure related to the delay of the accrual of interest when the burden of proof is on the taxpayer to furnish information about their refund request.

Lastly, the department proposes to remove current (11) as the section is in conflict with ARM 42.2.510. ARM 42.2.510 requires the department to send a Notice of Assessment (NOA), as defined in ARM 42.2.304(36), when a return is adjusted. The NOA must include information about the taxpayer's appeal rights. The taxpayer must first file a request for informal review. If the department makes a determination that the taxpayer does not agree with, the taxpayer can file a Notice of Referral to the Office of Dispute Resolution (ODR). ARM 42.2.510(7) states that "Once the matter is submitted to the ODR, ARM 42.2.613 through 42.2.621 apply." Therefore, the taxpayer must first follow the guidelines in ARM 42.2.510 before following the guidelines outlined in current (11).

~~42.15.316 EXTENSIONS AND ESTIMATED PAYMENTS (1) For tax years beginning after December 31, 2015, and before January 1, 2017, a six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the following conditions are met on or before the due date of the return:~~

~~(a) the taxpayer has applied for an extension of time to file their federal income tax return; and~~

~~(b) the taxpayer has paid either through withholding, estimated tax payments, or a combination of withholding and estimated payments, either of the following:~~

~~(i) 90 percent of their current year's income tax liability; or~~

~~(ii) 100 percent of their prior year's income tax liability.~~

~~(2) (1) A taxpayer's tax liability and percent level threshold of payment are determined as provided in ARM Title 42, chapter 17, subchapter 3.~~

~~(3) (2) If a taxpayer does not meet either of the required payment thresholds as required by 15-30-2604, MCA, late pay and late file filing penalties will be applied as provided in 15-1-216, MCA.~~

~~(4) (3) Underpayment interest, as provided in 15-30-2512, MCA, accrues to the original due date of the return. Interest from and after the original due date of the return accrues as provided in 15-1-216, MCA, whether or not the time for filing the return has been extended.~~

~~(5)~~ (4) The underpayment is calculated as provided in ARM Title 42, chapter 17, subchapter 3.

~~(6)~~ For tax years beginning after December 31, 2011, and before January 1, 2017, an individual whose income tax liability for the current year is \$200 or less, and who pays the entire tax liability and files his or her return on or before the extended due date provided for in 15-30-2604(3)(a), MCA, will not be charged interest or the penalties for late filing and late payment.

~~(7)~~ (5) For tax years beginning on or after January 1, 2017, a A six-month extension of time to file an individual income tax return is automatically allowed a taxpayer if the tax, penalty, and interest are paid when the return is filed.

~~(8)~~ (6) Taxpayers who are either first time filers, or have a zero or negative taxable income for the previous year, are considered to have paid 100 percent of the previous year's tax for purposes of meeting the threshold requirements in 15-30-2604, MCA.

AUTH: 15-30-2620, MCA

IMP: 15-1-201, 15-1-216, 15-30-2604, 15-30-2609, 15-30-2651, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.316 as outlined in the department's general statement of reasonable necessity to remove provisions that are out-of-date and no longer applicable and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.317 FILING DATE (1) In lieu of other evidence, a postmark issued by the United States Postal Service is considered the date of filing. To be timely, paper filings must be postmarked on or before the due date.

AUTH: 15-30-2620, MCA

IMP: ~~15-30-2504~~, 15-30-2507, 15-30-2604, 39-71-2503, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.317 to update the implementing statutes for the rule under 2-4-305, MCA, as outlined in the department's general statement of reasonable necessity.

42.15.319 DATE AND PLACE OF FILING AND PAYMENT (1) The due date for filing an individual income tax return and payment of the tax due is the 15th day of the 4th fourth month following close of the tax year.

(2) A return may be filed by personal delivery, mail, and electronically.

~~(a) A return may be filed by personal delivery to:~~

Department of Revenue

3rd Floor, Sam W. Mitchell Building

125 North Roberts

Helena, Montana 59620;

~~(b) A return may be filed by mailing it postage prepaid by U.S. Postal Service~~

~~First-Class or Priority mail to:~~

Department of Revenue

P.O. Box 5805

Helena, Montana 59604-5805

(i) ~~(a)~~ if a return is mailed as provided in this ~~section~~ rule, on or before the due date, and received by the department, the return is considered filed on the date mailed. A taxpayer is responsible for establishing the date a return is mailed.

~~(e)~~ (b) The rules for filing a return electronically are located in ARM Title 42, chapter 5, subchapter 2.

(3) Every taxpayer must compute their tax liability and pay the balance of any tax due in full on or before the prescribed due date, as stated in 15-30-2602, MCA. If the balance due is less than \$1, payment is not required. If full payment of the balance due is not made on or before the prescribed due date, interest and late payment penalty accrue from the prescribed due date of the return until paid, as provided in 15-1-216, MCA.

(a) If tax is paid by check or money order, the check or money order should be made payable to the "Montana Department of Revenue."

(b) The rules for paying a tax electronically are located in ARM Title 42, chapter 5, subchapter 2.

(c) The rules for paying a tax by credit card are located in ARM Title 42, chapter 5, subchapter 2.

AUTH: 15-30-2620, MCA

IMP: 15-30-2602, 15-30-2604, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.319 as outlined in the general statement of reasonable necessity relative to the removal of certain redundant physical address and website references in the department's administrative rules and to clarify rule provisions.

42.15.327 STATEMENT REQUIRED FOR ADJUSTMENT OF JOINT RETURN (1) The written request for an adjustment of the joint tax return referenced in ARM 42.15.326, shall include a statement entitled "injured spouse statement." Before any adjustment can be considered, this statement must:

(a) contain the identical social security numbers of both spouses in the same order as they appear on the original joint tax return;

(b) clearly indicate how any income, itemized deductions, exemptions, credits, and tax payments (as originally claimed) should be divided between the spouses; and

(c) be signed by both spouses; and

~~(d) be mailed to:~~

~~Department of Revenue~~

~~P.O. Box 5805~~

~~Helena, Montana 59604-5805.~~

(2) This statement, when ~~mailed~~ submitted to the department, does not relieve the obligated taxpayer of the responsibility for requesting a hearing, in writing, if the taxpayer wishes to contest the child support debt. This request must be made within 30 days after the notice of offset and opportunity for hearing is mailed to the taxpayer.

(3) The department will review the statement and the tax return, make the adjustment of the tax liability and refund, and will subsequently notify the taxpayer in writing of the final determination. If the taxpayer disagrees with the adjustment made

by the department, the taxpayer may request a reconsideration review of the adjustment pursuant to ARM 42.2.613 through 42.2.621.

AUTH: 15-1-201, 15-30-2620, 17-4-110, MCA

IMP: 15-1-211, 15-30-2609, 17-4-105, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.327 as outlined in the general statement of reasonable necessity relative to the removal of certain redundant physical address and website references in the department's administrative rules and to clarify rule provisions.

42.15.328 FORM OF CLAIM FOR REFUND (1) A claim for refund may be in the form of an amended return, a formal claim, or any written instrument signed by the taxpayer, ~~clearly stating~~ which states the facts concerning payment of the tax and the grounds upon which the claim or refund is based. Any claim based on changes to income or deductions must be on an amended return. ~~If the claim is not made on an amended return form, it must be mailed to:~~

~~DEPARTMENT OF Revenue~~

~~P.O. Box 5805~~

~~Helena, MT 59604-5805.~~

AUTH: 15-30-2620, MCA

IMP: 15-30-2609, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.328 as outlined in the general statement of reasonable necessity relative to the removal of certain redundant physical address and website references in the department's administrative rules and to clarify rule provisions.

42.15.415 (42.15.223) DEDUCTIONS FOR SALE OF LAND TO A BEGINNING FARMER (1) A deduction from ~~adjusted gross~~ federal taxable income is allowed for each sale of 80 acres or more if approved by the agricultural loan authority. The deduction is the amount which would have to be included in ~~adjusted gross~~ federal taxable income as ordinary income and the taxable portion of capital gains resulting from the sale, up to a maximum deduction of \$50,000. The deduction will be taken each year a payment is received until the loan is repaid or the deductions for all years equal \$50,000.

(2) The taxpayer may claim more than one deduction as a result of sales to beginning farmers provided each sale is approved by the agricultural loan authority.

(3) To the extent that a net operating loss is created as a result of this deduction, such loss shall not be available for carryover or carryback provisions.

(4) Individuals in a partnership that makes an approved sale are also allowed this deduction. The partners' distributive shares of profit may be reduced by the amount of the allowable deductions. However, in no case shall the total deduction for all partners exceed \$50,000 for each sale.

(5) Shareholders of an electing small business corporation are not allowed a deduction on their individual tax returns for approved sales made by the corporation. The deduction must be taken by the corporation.

(6) (5) For tax deduction purposes, a copy of the approval of the transaction by the agricultural loan authority must be attached to the return claiming the deduction. The department may also require additional documentation on request to establish the eligibility of the transaction for a tax deduction.

AUTH: 15-1-201, MCA

IMP: 80-12-211, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.415 and transfer it to ARM 42.15.223 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update income references from adjusted gross to federal taxable income. The department also proposes a general amendment to combine (4) and (5) to clarify rule provisions regarding sale of property owned by business entities, which are unnecessarily separated in the current version of the rule.

42.15.602 MEDICAL CARE SAVINGS ACCOUNT REPORTING AND PAYMENTS (1) A Montana medical care savings account (MSA) is subject to the following requirements:

(a) The MSA must have a unique account holder who is an individual and a resident of Montana. A jointly held account does not qualify. Regardless of income tax filing status, married taxpayers must each open an account to register as an account holder to be eligible to reduce their federal ~~adjusted gross~~ taxable income by the amount of their allowable contributions.

(b) Annual interest or income earned in a Montana MSA is excluded from ~~Montana adjusted gross~~ federal taxable income as long as it remains as a deposit in the account, is withdrawn from the account to pay for eligible medical expenses, is distributed to an immediate family member as provided in 15-61-202, MCA, or is used for paying the expenses of administering the account. Year-end interest or other income reports provided to the taxing authorities and the account holder must be provided in such a manner that the interest or other income earned on the Montana MSA can be separately identified in order to remain exempt.

(c) A taxpayer who used a loss in the value of the investment contained in the MSA as a reduction of their federal ~~adjusted gross~~ taxable income, must add this loss back to the federal ~~adjusted gross~~ taxable income for the determination of the Montana taxable income.

(d) ~~Beginning January 1, 2018, an account holder cannot contribute in excess of the contribution limit stated in 15-61-202, MCA. During the 2018 calendar year only, any contribution made before January 1, 2018, in excess of the principal, which is the sum of contributions deducted from adjusted gross income in all preceding tax years, can be used as deductible contribution, as eligible expenses, or withdrawn free of tax and penalties. After December 31, 2018, an account holder cannot exclude from adjusted gross income any contribution in excess of the~~

principal remaining in the MSA, and all unqualified withdrawals must be taxed as ordinary income and subject to the penalty as provided in ~~15-61-203, MCA.~~

(e) Before receiving any exempted transfer of funds from a Montana MSA of an immediate family member, a transferee must establish his or her own account, provided he or she is eligible to be an account holder of a Montana MSA.

(2) Every account holder of a self-administered account, or account administrator, is required to annually submit the following information regarding each MSA:

- (a) name of the account holder;
- (b) address of the account holder;
- (c) taxpayer identification number of the account holder;
- (d) starting and ending balances of the account;
- (e) contributions made during the tax year by the account holder;
- (f) amount of withdrawals made during the tax year by the account holder;
- (g) dates of any withdrawals;
- (h) interest or other income earned on the principal of the MSA; and
- (i) amount of penalties withheld and remitted.

(3) Each individual account holder of a self-administered account must file the information required in (2) on forms provided by or authorized by the department and be remitted with the individual income tax form for the corresponding tax year. The account holder must report the name and address where the account is established, and the account number, annually.

(4) On or before January 31, an account administrator, other than an account holder, must file the information required under (2) on forms provided by or authorized by the department.

(5) Account holders or account administrators who withhold penalties on unqualified withdrawals must submit the penalties to the department as follows:

(a) Account administrators must remit the penalties on or before January 31 of the following year to the department.

(b) Self-administered individual account holders must report and remit penalties with the individual income tax form for the corresponding tax year.

(6) Failure to remit any withheld penalties within the time provided is considered to be an unlawful conversion of trust money. Penalties provided in ~~15-1-216 and 15-30-2641, MCA~~, apply to any violation of the requirement to collect, truthfully account for, and pay amounts required to be withheld from ineligible withdrawals of the account holder.

AUTH: 15-1-201, 15-30-2620, MCA;

IMP: 15-61-202, 15-61-203, 15-61-204, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.602 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update income references from adjusted gross to federal taxable income. The department also proposes to amend (1)(d) to remove provisions that are out-of-date and no longer applicable, and remove the cross reference to 15-30-2641, MCA, in (6) as the statute was repealed by House Bill 72 (2019).

42.15.603 MEDICAL CARE SAVINGS ACCOUNT - WITHDRAWALS, PENALTIES, AND TRANSFERS

(1) The funds held in a Montana medical care savings account (MSA) may be withdrawn by the account holder free of tax at any time during the year if they are qualified withdrawals.

(2) Except as provided in (7), qualified withdrawals include:

(a) eligible medical expenses, as defined in 15-61-102, MCA, paid during that year; or

(b) expenses incurred for administering the account.

(3) An unqualified withdrawal must be:

(a) included in the taxpayer's income tax return as ordinary income; and

(b) ~~is subject to a penalty equal to 10 ten percent of the amount of the withdrawal from the account. An unqualified unless the withdrawal is made on the last business day of the business year, as set forth in 15-61-203, MCA, is not subject to this penalty but shall be taxed as ordinary income as provided in (a).~~

(4) Withdrawals that do not meet the following requirements and exceptions are deemed unqualified:

(a) Withdrawals must be made by the account holder of a self-administered account, or on behalf of an account holder, by January 15 for the purpose of reimbursing eligible medical expenses paid during the previous year.

(b) Each account holder must maintain documentation of eligible expenses for a minimum of three years from the date the account holder filed a Montana income tax return for the year the expenses were incurred.

(c) In the case of requests made by account holders from account administrators for withdrawals to pay for eligible medical expenses, the expenses must be supported by an itemized statement of expenses that were either paid or charged by the account holder and the signature of the account holder attesting that these expenses are "eligible medical expenses." The burden of proving that a withdrawal from an MSA was made for an eligible expense is upon the account holder and not upon the account administrator.

(d) All payments made from an MSA must be made payable to the account holder, the eligible medical provider, the estate, or the legal guardian of the account holder, unless an agreement exists between the account holder and/or the account administrator and the payee to pay eligible medical expenses electronically.

(5) An account holder who becomes a resident of another state is deemed to have made an unqualified withdrawal for the entire value of the balance contained in the account on the date the individual changed residency. The withdrawal is deemed to have been made on the last business day of the taxpayer's Montana residency, and is not subject to the 10 ten percent penalty provided in 15-61-206, MCA.

(6) The direct transfer of funds from a Montana MSA of an account holder to another Montana MSA is deemed an unqualified withdrawal to the transferor and ordinary income to the transferee, to the extent it is includable in the transferee's federal gross income, except when the funds are directly transferred to:

(a) another Montana MSA of the same account holder established to replace the initial one or with a different account administrator; or

(b) a Montana MSA held by an immediate family member of the account holder, to the extent it is not includable in the transferee's federal gross income.

(7) After the death of the account holder:

(a) any distribution or withdrawal of funds from the Montana MSA is deemed an unqualified withdrawal unless:

(i) the funds are distributed as an inherited account; or

(ii) the withdrawals are made during the 365 days following the death of the account owner, either by the estate of the deceased on an existing account, or by any account holder of an inherited account to pay for eligible expenses incurred by the deceased;

(b) inherited accounts are deductible from ~~Montana adjusted gross income~~ federal taxable income to the extent they are included in the federal ~~adjusted gross taxable income~~ taxable income; and

(c) the ~~40~~ ten percent penalty for unqualified withdrawals does not apply to any distribution of funds to the heirs of the deceased whether or not the funds received qualify as an inherited account.

(8) Qualified withdrawals made with respect to a family leave expense, as defined in 15-61-102, MCA, are deemed to be in exchange of adequate consideration for loss of income and must be treated as ordinary income to the recipient, except when received by the account holder or the spouse of the account holder.

(9) All medical records and expenses provided by an account holder to an account administrator are to be kept confidential by the account administrator unless the account holder gives authorization to disclose them to a third party.

AUTH: 15-1-201, 15-30-2620, MCA

IMP: 15-61-102, 15-61-202, 15-61-203, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.603 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income, and to clarify rule provisions. The department also proposes formatting amendments to stated percentages for uniformity with other department rules and the Secretary of State's style guide adopted for administrative rules.

42.15.802 CONTRIBUTIONS TO FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS (1) The program administrator determines who can be an account owner and from whom it will accept contributions to an account. Account ownership and the acceptance of contributions are not related to the ability of the contributor to reduce Montana taxable income. Entitlement to the deduction depends on meeting specific statutory requirements set forth in Title 15, chapter 62, MCA, and these rules.

(2) An individual, including a nonresident, may reduce their ~~Montana adjusted gross~~ federal taxable income by the lesser of the total contributions they actually make to one or more accounts as provided in ~~15-30-2110~~ 15-30-2120 and 15-62-207, MCA, during the tax year, or \$3,000.

(3) A rollover from one account to another or from one program to another state program is not a contribution for which a deduction may be claimed.

(4) For Montana tax purposes, deductible contributions to an account do not include the earnings on the account.

AUTH: 15-30-2620, MCA

IMP: ~~15-30-2110~~ 15-30-2120, 15-62-201, 15-62-207, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.802 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income, and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.803 WITHDRAWALS FROM FAMILY EDUCATION SAVINGS PROGRAM ACCOUNTS AND RECAPTURE TAX (1) Penalties assessed for nonqualified withdrawals are not deductible in arriving at Montana taxable income.

(2) A rollover from one account to another or to an ABLE account is allowed under the same terms described under IRC 529. However, if the funds are rolled over to an account owned by an individual who is not a resident of Montana, then the amount rolled over is a recapturable withdrawal, which is defined in 15-62-208, MCA.

(3) A recapture tax at a rate equal to the highest rate of tax provided in 15-30-2103, MCA, is imposed on the recapturable withdrawal of contributions to a family education savings account deducted by the contributor. Except as provided in (10), the recapture tax is payable by the owner of the account from which the withdrawal was made even if the account owner did not make the deductible contribution. The account owner is liable for the tax even if the account owner is not a Montana resident at the time of the withdrawal.

(4) An account owner who is subject to the recapture tax must report the tax on the tax return for the taxable year of the withdrawal and must pay the tax at the time the income tax for such year is due.

(5) The portion of a recapturable withdrawal that is not treated as the withdrawal of earnings shall be treated as:

(a) first, out of nondeductible contributions not previously withdrawn; and

(b) second, out of deductible contributions not previously withdrawn.

(6) The portion of any other withdrawal that is not treated as the withdrawal of earnings shall be treated as:

(a) first, out of deductible contributions not previously withdrawn; and

(b) second, out of nondeductible contributions not previously withdrawn.

(7) The taxpayer shall have the burden of sustaining a claim that all or a portion of the contributions withdrawn were not attributable to deductible contributions. There shall be a presumption that a recapturable withdrawal is a withdrawal of deductible contributions.

(8) A recapturable withdrawal of amounts that previously reduced Montana ~~adjusted gross~~ taxable income under ~~15-30-2110(11)~~ 15-30-2120(3)(e), MCA, is Montana source income pursuant to 15-30-2101(18)(a)(xvi), MCA.

(9) Nonresidents are subject to the recapture tax under ARM 42.15.803 and 42.15.804.

(10) If the account is established under the Montana Uniform Transfers to Minors Act, and the minor is not yet 21 years of age, the custodian of that account is subject to any recapture tax on a recapturable withdrawal.

AUTH: 15-30-2620, 15-62-201, MCA

IMP: ~~15-30-2110~~ 15-30-2120, 15-62-201, 15-62-208, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.803 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income, and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.804 VERIFICATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT CONTRIBUTIONS AND WITHDRAWALS

(1) Each program manager shall submit a report to the department via the state of Montana's secure file transfer service (or functional equivalent), by February 28 following the close of the preceding tax year which identifies all contributions and withdrawals for family education savings accounts for which the account owner is, or was at the time the account was opened, a Montana resident. The report must be submitted in an electronic format sortable by the following information for each contributor, designated beneficiary, account owner, and distributee:

- (a) full name;
- (b) last reported address;
- (c) social security number;
- (d) amount of the contributions;
- (e) amount of the withdrawals (and to the extent that the Internal Revenue Service requires such information with respect to withdrawals, the portion constituting contributions and the portion constituting earnings); and
- (f) in the case of the account owner, a notation as to whether the distribution is an early or nonqualified withdrawal.

(2) At the request of the department, a program manager shall provide complete copies of any other reports about accounts that it provides to either the Internal Revenue Service or the Montana Board of Regents.

(3) A program manager shall report a withdrawal as an early withdrawal if the withdrawal is made within one year of the date that the account was opened.

(4) A program manager shall withhold the recapture tax from any recapturable withdrawal from an account that was at any time owned by a resident of Montana but that at the time of the withdrawal is not owned by a person who is a resident of Montana. For purposes of this provision, the program manager shall assume that the account owner's address is the last address that the account owner reported to the program manager.

(5) Any recapture tax that is withheld shall be paid to the department not later than the last day of the month following the month in which such withholding

occurred. A program manager shall have no liability to the department for failure to withhold recapture tax if such error was made in good faith.

(6) A taxpayer who makes a recapturable withdrawal, for which withholding would be required, may petition the department in writing to determine the amount of the recapture tax. The petition shall include all facts relevant to the proposed withdrawal, including information about the account and other accounts owned by the taxpayer and evidence to show that all or a portion of the contributions are not attributable to previously deducted contributions. If the department is satisfied with the evidence, it shall issue a letter determining the recapture tax to be withheld by the program manager.

(7) Nothing in statute or rule prevents the department from directly contacting the contributor, designated beneficiary, account owner, or distributee for the reporting information described herein.

AUTH: 15-30-2620, 15-62-201, MCA

IMP: ~~15-30-2440~~ 15-30-2120, 15-62-201, 15-62-208, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.804 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.805 DEFINITIONS In addition to the terms defined in 15-62-103, MCA, the following definitions also apply to terms used in this subchapter:

(1) "Act" means the Family Education Savings Act, as referenced in 15-62-101, MCA.

(2) "Child" means a son, stepson, daughter, stepdaughter, or legally adopted son or daughter of the taxpayer.

(3) "Distributee" means the account owner or designated beneficiary who withdraws the funds. If the account is established under the Montana Uniform Transfers to Minors Act, and the minor is not yet 21 years of age, the distributee is the custodian of that account.

(4) "Program" means the family education savings program established pursuant to the Act, or any other program established and maintained under another state that qualifies as a qualified tuition program under IRC 529.

(5) "Program manager" means a financial institution selected pursuant to 15-62-203, MCA.

AUTH: 15-30-2620, 15-62-201, MCA

IMP: ~~15-30-2440~~ 15-30-2120, 15-62-103, 15-62-201, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.805 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.806 TAXATION OF FAMILY EDUCATION SAVINGS PROGRAM ACCOUNT EARNINGS (1) Earnings on family education savings program accounts are not included in Montana ~~adjusted gross~~ taxable income when earned. The earnings will be included in Montana ~~adjusted gross~~ taxable income when distributed to the extent they are not used to pay for qualified education expenses.

AUTH: 15-30-2620, 15-62-201, MCA
IMP: ~~15-30-2110~~ 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.806 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income, and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.807 EFFECTIVE DATE OF CONTRIBUTION FOR TAX PURPOSES
(1) For purposes of determining whether a contribution should be considered for one tax year or another, the date of mailing will be determinative. A certificate of mailing issued by the post office will be evidence of the date of mailing.

AUTH: 15-30-2620, 15-62-201, MCA
IMP: ~~15-30-2110~~ 15-30-2120, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.807 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.906 TAX EXEMPTION FOR FIRST-TIME HOME BUYER (1) An account holder who remains a "first-time home buyer" ~~may deposit and who contributed prior to January 1, 2024,~~ into an account more than the maximum exclusion allowed under 15-63-202, MCA, in any ~~given~~ tax year ~~prior to 2024~~ and may exclude from subsequent years any amounts previously deposited and not deducted as principal in a prior year.

(2) Once an individual purchases a single-family residence, the individual no longer is considered an account holder and a first-time home buyer. In subsequent years, the individual is not entitled to exclude amounts deposited into a first-time home buyer savings account or amounts previously deposited but not yet excluded from the account holder's ~~adjusted gross~~ federal taxable income.

(3) Interest or other income earned on the principal is excluded from ~~Montana adjusted gross~~ federal taxable income. Interest on other income on excess contributions, which have not yet been classified as principal, is not exempt in the years the interest or other income is earned.

(4) The amounts deposited into a first-time home buyer savings account is not considered principal until the year it is excluded from ~~adjusted gross~~ federal taxable income pursuant to ~~15-30-2110~~ 15-30-2120, MCA. For example, if a single individual who has never owned a home ~~transfers~~ transferred \$15,000 from an

existing savings account into a first-time home buyer account in year one and purchases a qualifying home at the end of December in year three, the effect on their Montana returns will be as follows:

(a) For year one, the individual reduces their state income by \$3,000 plus \$90 in interest earned on the \$3,000 principal only (\$90 at the rate of ~~3%~~ three percent of the \$3,000 principal). The remaining interest (\$360 at the rate of ~~3%~~ three percent of the \$12,000 carryover amount) is taxable in year one.

(b) In year two, the single individual is allowed a \$3,000 carryover reduction plus interest earned on \$6,090 (\$183 at the rate of ~~3%~~ three percent of the \$6,000 principal) for a total of \$3,183 reduction on the state income tax return. The remaining interest (\$281 at the rate of ~~3%~~ three percent of the \$9,360 carryover amount) is taxable in year two.

(c) At the end of December in year three, the single individual buys a qualifying home. The individual is permitted the \$3,000 carryover reduction on the Montana income tax for year three plus interest earned to the date of purchase (\$278 at the rate of ~~3%~~ three percent on \$9,273) for a total of \$9,551. The taxpayer must spend at least \$9,551 for eligible first-time home buyer expenses. The amount includes \$9,000 that qualifies for the reduction (\$3,000 for year one; \$3,000 for year two; \$3,000 for year three) plus the tax deferred interest for \$551 earned during year one, year two, and year three.

(d) Once the taxpayer purchases the home, the taxpayer can no longer claim the carryover reduction for the portion of the \$15,000 (\$6,000 plus interest) that the taxpayer did not claim as a reduction in prior years.

AUTH: 15-1-201, MCA

IMP: 15-63-203, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.906 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income. The department also proposes to amend the format of the percentages in the rule for internal consistency with other department rules and for conformity with the style guide adopted by the Secretary of State for administrative rules.

42.15.1002 DEDUCTION FOR CONTRIBUTIONS TO AN ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT (1) In addition to the individuals listed in ~~15-30-2110(12)~~ 15-30-2120(6), MCA, the following contributors identified in 53-25-117, MCA, are also allowed a deduction from Montana ~~adjusted gross~~ taxable income for a contribution made to an ABLE account:

(a) the designated beneficiary;
(b) the spouse of the designated beneficiary; or
(c) a parent, grandparent, sibling, or child related to the designated beneficiary by blood, marriage, or legal adoption.

(2) The deduction provided under ~~15-30-2110(12)~~ 15-30-2120(6), MCA, for contributions to an ABLE account is available to resident and nonresident individuals. If a nonresident individual contributes to an account, the deduction is

only allowed if the designated beneficiary is the nonresident's child or stepchild and is also a Montana resident.

(3) A contributor must provide a written report to the designated beneficiary or agent, by the end of the tax year in which the contribution is made to an ABLE account, detailing the amount of the contributions that will reduce Montana taxable adjusted gross income for that tax year.

AUTH: 15-1-201, 15-30-2620, 53-25-118, MCA

IMP: ~~15-30-2110~~ 15-30-2120, 53-25-104, 53-25-117, 53-25-118, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.1002 as outlined in the department's general statement of reasonable necessity relative to SB 399, updating income references from adjusted gross to federal taxable income, and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.1003 ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT RECAPTURE TAX (1) There is a recapture tax, payable by a designated beneficiary, regardless of residency status, on recapturable withdrawals from an ABLE account. Recapturable withdrawals and the amount of the recapture tax are provided in 53-25-118, MCA.

(2) A recapturable withdrawal of amounts that previously reduced a contributor's Montana taxable adjusted gross income under ~~15-30-2110(12)~~ 15-30-2120(6), MCA, is Montana source income to the designated beneficiary in the year of the recapturable withdrawal, as described in 15-30-2101(18)(a)(xvi), MCA.

(3) The recapture tax must be determined and withheld by the designated beneficiary or agent and reported to the department based on the recapturable withdrawal that occurred and the report detailing the contributions as required in ARM 42.15.1002(3). The designated beneficiary or agent must maintain records showing the reported contributions and withdrawals.

(4) The agent shall withhold and remit the recapture tax on a Montana individual income tax return for the tax year of the withdrawal if the recapturable withdrawal occurred from an account for which the designated beneficiary is no longer a resident of Montana.

AUTH: 15-1-201, 15-30-2620, 53-25-118, MCA

IMP: 15-30-2103, ~~15-30-2110~~ 15-30-2120, 53-25-118, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.1003 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

42.15.1004 VERIFICATION OF ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) ACCOUNT CONTRIBUTIONS AND WITHDRAWALS (1) Each program manager shall submit a report to the department via the state of Montana's secure file transfer service (or functional equivalent), by February 28 following the close of

the preceding tax year which identifies all contributions and withdrawals for ABLE accounts of Montana resident designated beneficiaries. The report must also include contributions made to accounts of designated beneficiaries who were residents at the time the account was opened.

(2) The report must be in an electronic format sortable by the following contributor and designated beneficiary information:

(a) full name;

(b) last reported address;

(c) social security number;

(d) amount of the contributions;

(e) amount of the withdrawals (and to the extent that the Internal Revenue Service requires such information with respect to withdrawals, the portion constituting contributions and the portion constituting earnings); and

(f) a notation as to whether a distribution is a recapturable withdrawal, and if the withdrawal is made in violation of IRC 592A, when applicable.

(3) At the request of the department, a program manager shall provide complete copies of any other reports about accounts that it provides to either the Internal Revenue Service or to the Montana Department of Public Health and Human Services.

(4) Nothing in statute or rule prevents the department from directly contacting the contributor, designated beneficiary, or agent for the reporting information described herein.

AUTH: 15-1-201, 15-30-2620, 53-25-118, MCA

IMP: ~~15-30-2110~~ 15-30-2120, 53-25-118, MCA

REASONABLE NECESSITY: The department proposes to amend ARM 42.15.1004 as outlined in the department's general statement of reasonable necessity relative to SB 399 and to update the implementing statutes for the rule under 2-4-305, MCA.

6. The department proposes to repeal the following rules:

42.15.205 REFUNDS OF FEDERAL INCOME TAX

AUTH: 15-30-2620, MCA

IMP: 15-30-2110, 15-30-2131, MCA

42.15.206 ADDITIONS AND SUBTRACTIONS FOR MARRIED TAXPAYERS FILING SEPARATE RETURNS

AUTH: 15-30-2620, MCA

IMP: 15-30-2110, MCA

42.15.213 SMALL BUSINESS CORPORATION DIVIDEND AND CAPITAL GAIN EXCLUSION

AUTH: 15-33-105, MCA
IMP: 15-33-106, MCA

42.15.215 SENIOR INTEREST INCOME EXCLUSION

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.15.217 DISABILITY INCOME EXCLUSION

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.15.218 CAPITAL GAIN EXCLUSION FOR PRE-1987 SALES

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, 15-30-2111, MCA

42.15.219 PENSION AND ANNUITY INCOME EXCLUSION

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.15.221 DEPENDENT CHILD UNEARNED INCOME EXCLUSION

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.15.222 RAILROAD RETIREMENT AND SOCIAL SECURITY BENEFIT
EXCLUSION

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, MCA

42.15.312 ACCEPTANCE OF REPRODUCED TAX FORMS

AUTH: 15-30-2620, MCA
IMP: 15-30-2604, MCA

42.15.318 MONTANA NET OPERATING LOSSES

AUTH: 15-30-2620, MCA
IMP: 15-30-2119, MCA

42.15.321 JOINT RETURNS

AUTH: 15-30-2620, MCA

IMP: 15-30-2602, MCA

42.15.322 SEPARATE RETURNS FOR MARRIED TAXPAYERS

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, 15-30-2602, MCA

42.15.401 DEFINITIONS

AUTH: 15-30-2620, MCA
IMP: 15-30-2114, 15-30-2115, 15-61-201, MCA

42.15.402 PERSONAL EXEMPTIONS

AUTH: 15-30-2620, MCA
IMP: 15-30-2114, MCA

42.15.403 EXEMPTIONS FOR DEPENDENTS

AUTH: 15-30-2620, MCA
IMP: 15-30-2114, 15-30-2115, 15-30-2116, MCA

42.15.427 DEDUCTION FOR HOUSEHOLD AND DEPENDENT CARE EXPENSES

AUTH: 15-30-2620, MCA
IMP: 15-30-2131, MCA

42.15.510 DEFINITIONS

AUTH: 15-30-2620, MCA
IMP: 15-30-2101, 15-30-2119, MCA

42.15.523 STANDARD DEDUCTION

AUTH: 15-30-2620, MCA
IMP: 15-30-2132, MCA

42.15.524 ITEMIZED DEDUCTIONS OF MARRIED TAXPAYERS

AUTH: 15-30-2620, MCA
IMP: 15-30-2110, 15-30-2131, MCA

42.15.525 MONTANA ADJUSTED GROSS INCOME TO BE USED WHEN CALCULATING ITEMIZED DEDUCTIONS

AUTH: 15-30-2620, MCA

IMP: 15-30-2131, MCA

42.15.526 SMALL BUSINESS LIABILITY FUNDS

AUTH: 15-30-2620, 15-31-501, MCA

IMP: 15-30-2118, 15-30-2141, 15-31-117, 15-31-118, MCA

42.15.527 DEDUCTION PROVIDED UNDER INTERNAL REVENUE CODE SECTION 199A NOT ALLOWED

AUTH: 15-1-201, 15-30-2620, MCA

IMP: 15-30-2131, 15-30-2620, MCA

42.15.902 FIRST-TIME HOME BUYER ACCOUNT ADMINISTRATOR REGISTRATION

AUTH: 15-1-201, MCA

IMP: 15-63-102, 15-63-204, MCA

7. Concerned persons may submit their data, views, or arguments, either orally or in writing, at the hearing. Written data, views, or arguments may also be submitted to: Todd Olson, Department of Revenue, Director's Office, P.O. Box 7701, Helena, Montana 59604-7701; telephone (406) 444-7905; fax (406) 444-3696; or e-mail todd.olson@mt.gov and must be received no later than 5:00 p.m., December 30, 2024.

8. Todd Olson, Department of Revenue, Director's Office, has been designated to preside over and conduct the hearing.

9. The Department of Revenue maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request, which includes the name and e-mail or mailing address of the person to receive notices and specifies that the person wishes to receive notice regarding particular subject matter or matters. Notices will be sent by e-mail unless a mailing preference is noted in the request. A written request may be mailed or delivered to the person in number 7 above or faxed to the office at (406) 444-3696, or may be made by completing a request form at any rules hearing held by the Department of Revenue.

10. An electronic copy of this notice is available on the department's web site at www.mtrevenue.gov, or through the Secretary of State's web site at rules.mt.gov.

11. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsors of SB 104, SB 399, HB 221, and HB 447 were contacted by electronic mail on October 16, 2024, and on November 12, 2024.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the proposed adoption, amendment, and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Todd Olson
Todd Olson
Rule Reviewer

/s/ Scott Mendenhall
Scott Mendenhall
Deputy Director of Revenue

Certified to the Secretary of State November 12, 2024.